

Appln. No.: 10/803,281  
Amendment dated December 26, 2007  
In Reply to Office action of September 25, 2007

### **REMARKS**

Claims 1-15 are pending in the application, and all have been rejected in the Office action of January 18, 2007. Claims 1, 6 and 11 are independent claims. Claims 2-5, 7-10 and 12-14 depend from independent claims 1, 6 and 11, respectively. Claim 15 depends from claim 14, which in turn depends from independent claim 11. Applicants respectfully request reconsideration of claims 1-15, in light of the following remarks.

#### **Amendments to the Claims**

Claims 1, 6, 11, and 14 have been amended to more clearly describe the claimed subject matter. Applicants respectfully submit that this amendment does not add new matter. By way of example, and without limitation, support for the amendments to the claims can be found in Figures 1-6 and 9-17, and in the descriptions associated with those figures.

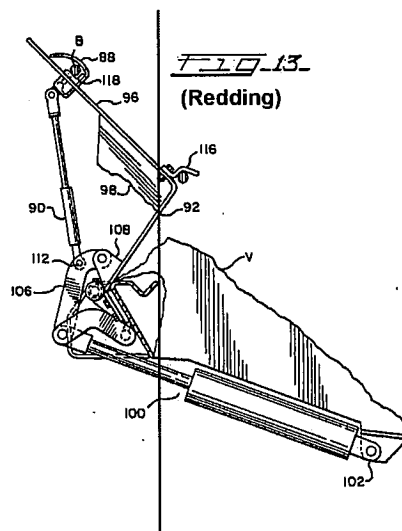
#### **Rejections Under 35 U.S.C. §102(b)**

Claims 11 and 13 were rejected under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 5,024,573 ("Redding"). (9/25/2007 Office Action, pp. 2-3.) Applicants respectfully submit that the rejection should be withdrawn because Redding fails to disclose each and every element of Amended Claim 11 and Claim 13. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed.Cir. 1987); MPEP § 2131. The Office Action fails to demonstrate

that Redding discloses each and every element of Amended Claim 11 or Claim 13 (which includes every limitation of Amended Claim 11).

Amended Claim 11 requires “a motor having a rotatable shaft” and “rotating the rotatable shaft” to operate the lifter. Redding discloses only a hydraulic cylinder, which operates the lifter by moving a piston in and out of the cylinder. *E.g.*, Redding, Col. 3, lines 37-40; Figs. 2, 4, 12 and 13.

Amended Claim 11 further requires operating the refuse cart lifter “to a dumping position wherein a substantial portion of the faceplate is located inward of the lower hopper edge.” *See, e.g.*, Redding, Fig. 12. Figure 9 of Redding does not disclose the location the lower hopper edge. Figure 13 of Redding, however, discloses the position of the lifter relative to sill S during emptying of refuse container C. Figure 13 of Redding, reproduced below with a line representing the plane at the edge of sill S, discloses only that the very tip of the faceplate, not a substantial portion of the entire faceplate, is located inward of sill S in the relevant position.



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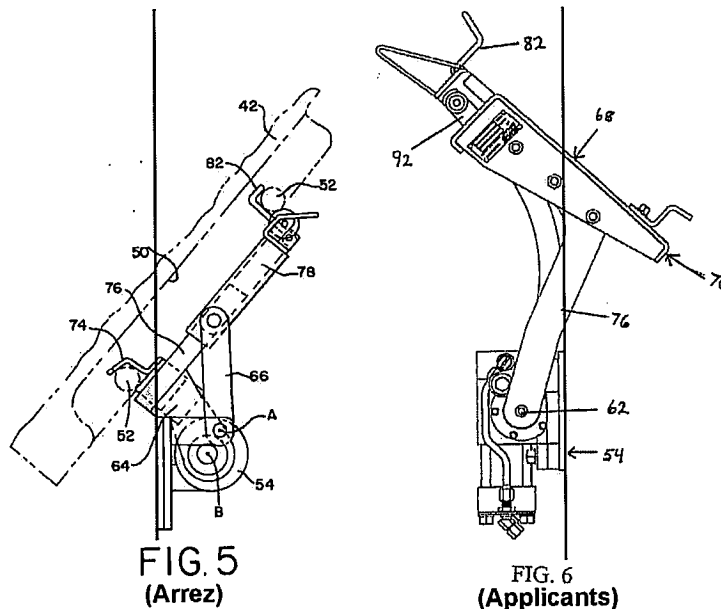
Thus, Redding fails to disclose each and every element of amended Claim 11 or Claim 13, which includes every limitation of amended Claim 11, and Applicants respectfully submit that the 102(b) rejection based on Redding should be withdrawn.

Claims 11-13 were rejected under 35 U.S.C. § 102(a) as being anticipated by United States Patent No. 6,503,045 ("Arrez"). (9/25/2007 Office Action, pp. 3-4.) Again, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros.*, 814 F.2d at 631; MPEP § 2131. The Office Action failed to demonstrate that Arrez discloses every element of Claims 11-13.

The Office Action states, without citation to the specification of Arrez, that Arrez discloses "further operating the device to a dumping position where the faceplate is substantially located inward of said hopper edge." (9/25/2007 Office Action, p. 3.) Applicants respectfully submit that Arrez nowhere discloses that a substantial portion of the carriage is located inward of sill 32 when the lifter is in its extended position for dumping a refuse collection container.

Figure 5 of Arrez discloses the position of the lifter relative to a base plate 62 when the lifter is in its extended position for dumping a refuse collection container 42. Arrez, Col. 2, lines 32-34. Similarly, Figure 11 of Arrez depicts the lifter in the same position, partially in section, and without showing refuse collection container 42. Arrez, Col. 2, lines 52-54. Arrez teaches that base plate 62 is mounted outward of and adjacent to sill 32. *See* Arrez, Col. 3, lines 9-11; Fig. 1. Sill 32 is not depicted in Figure 5 or Figure 11 of Arrez. Moreover, Figures 5 and 11 of

Arrez clearly show that only that the tip of the carriage is located inward of base plate 62 in the relevant position, and the tip of the carriage is not a substantial portion of the carriage. See comparison of Figure 5 of Arrez with Figure 6 of the present Application below:



In any case, claims 11-13 require a substantial portion of the faceplate to be located inward of the lower hopper edge, not the baseplate, in the dumping position. Applicants submit that if sill 32 of Arrez was depicted in Figures 5 or 11, not even the tip of the carriage would be located inward of sill 32. See, e.g., Arrez Figure 1. Thus, even if the carriage of Arrez could be considered a faceplate in accordance with Applicant's claimed invention, The addition of sill 32, as seen in Figure 1 of Arrez for example, would place even the tip of the carriage outward of the lower hopper edge, not inward as required by the claims. See Application Figure 17. Thus, Applicants respectfully submit that the 102(a) rejection based on Arrez should be withdrawn.

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In light of the above remarks, Applicants respectfully submit that Claims 11-13 are not anticipated by the cited prior art references. Applicants respectfully request that the anticipation rejections presented in the 9/25/2007 Office Action be withdrawn, and that the presently pending claims be allowed.

**Rejections Under 35 U.S.C. §103(a)**

Claims 1-10 were “rejected under 35 U.S.C. 103(a) as being unpatentable over Redding et al. in view of Arrez et al.” (9/25/2007 Office Action, pp. 4-5.) Applicants respectfully submit that the Office Action has fails to establish a case of *prima facie* obviousness with respect to the pending claims, as amended, for at least the reasons provided below.

The Office Action states that it would have been obvious “to provide the device taught by Redding et al. with a rotary motor as taught by Arrez et al. in order to simplify the mounting of the actuator as well as reducing its size while using a well known means to operate a lift of this type.” (9/25/2007 Office Action, p. 5.) Yet, adding a rotary motor would render Redding unsatisfactory for its intended purpose. M.P.E.P. §2143.01 (“If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.”).

The “principle feature” of the Redding lifter is that the lifter “does not interfere with access for pivot dumping large rear loading containers.” Redding, Col. 1, lines 25-28; Fig. 1. *See also*, Redding, Col. 2, lines 65-68 (“The lifter **20** is located at a first, or lower, position beneath the sill S... to permit horizontal access to the edge **E** from the edge **E** to the ground... Thus, in accordance with the present invention, the lifter **20** lifts and tilts small containers without interfering with the

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emptying of both small and large containers into the vehicle V.”). Replacing the extremely low-profile pivot point **24** with the much bulkier rotary motor of Arrez would cause the Redding lifter to protrude from the vehicle and interfere with the dumping of other refuse containers over the lifter. Thus, the proposed combination is improper.

Further, Claims 1 and 6 have been amended to require that the back side of the baseplate be mounted to a substantially vertical surface on the refuse collection vehicle. If the modified Redding lifter baseplate was mounted to a substantially vertical surface on the refuse collection vehicle, the modified lifter would again be unsatisfactory for its intended purpose. Even without the added rotary motor, the modified Redding lifter would simply be unable to retract under the hopper edge and would therefore interfere with the dumping of other refuse containers over the lifter. For this separate reason, the proposed combination is also improper. M.P.E.P. §2143.01 (“If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.”).

Contrary to the position taken in the Office Action, Figure 9 of Redding and Figures 9 and 11 of Arrez do not “show relative positions of a base and faceplate as show in the drawings for the instant invention.” (9/25/2007 Office Action, p. 6.). Claims 1 and 6 require “a motor attached to the front side of the baseplate.” The hydraulic cylinder of Redding, however, is attached at **102**. If **102** is the baseplate, Figure 13 of Redding clearly does not depict the claimed relative position of a faceplate and a baseplate, *i.e.*, “wherein a substantial portion of the faceplate is capable of being rotated above and behind the baseplate when the lifting device is

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emptying a refuse cart.” In fact, no portion of plate **96** in Redding is capable of being rotated above and behind **102**. Further, Figure 11 of Arrez also does not depict a substantial portion of the faceplate being rotated above and behind a baseplate. *See* comparison of Figure 11 of Arrez with Figure 6 of the present Application on page 10 above.

Claims 14 and 15 were “rejected under 35 U.S.C. 103(a) as being unpatentable over Redding et al. as applied to claim 11 above, and in further view of Arrez et al.” (9/25/2007 Office Action, p. 5.) Applicants respectfully submit that the Office Action has fails to establish a case of *prima facie* obviousness with respect to the pending claims, as amended, for at least the reasons provided below.

With regard to an obviousness rejection, MPEP 2142 states that in order for a *prima facie* case of obviousness to be established, three basic criteria must be met, one of which is that the reference or combination of references must teach or suggest all the claim limitations. As discussed above in regard to anticipation on pages 7-11, neither Redding nor Arrez teaches or suggests “a dumping position wherein a substantial portion of the faceplate is located inward of the lower hopper edge.” Thus, the Office Action has failed to establish a *prima facie* case of obviousness with respect to Claims 14 and 15. Further, as discussed above on pages 11-12, modifying Redding by adding the rotary motor of Arrez is improper because it renders the lifter of Redding unsatisfactory for its intended purpose. M.P.E.P. §2143.01 (“If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.”).

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Applicants respectfully submit that Claims 1-10, 14 and 15, as amended, would not have been obvious in view of the cited prior art references. Applicants respectfully request that the obviousness rejections be withdrawn and that the presently pending claims be allowed.

### **Conclusion**

Applicants submit that Claims 1-15, as amended, are patentable over the cited prior art and request withdrawal of the rejections set forth in the Office Action dated September 25, 2007. If the Examiner has any questions or the Applicants can be of any assistance, the Examiner is invited to contact the undersigned.

The Commissioner is hereby authorized to charge any other fees required by this submission or to credit any overpayment, to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,

Dated: December 26, 2007

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